

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

MARK R. HEMPHILL, M.D.

License No. 24566

For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-08-0673A

**CONSENT AGREEMENT FOR
LETTER OF REPRIMAND AND
PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Mark R. Hemphill, M.D. ("Respondent"), the parties agree to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

1 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
2 other pending or future investigation, action or proceeding. The acceptance of this
3 Consent Agreement does not preclude any other agency, subdivision or officer of this
4 State from instituting other civil or criminal proceedings with respect to the conduct that is
5 the subject of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this
7 matter and any subsequent related administrative proceedings or civil litigation involving
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended
9 or made for any other use, such as in the context of another state or federal government
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof)
13 to the Board's Executive Director, Respondent may not revoke the acceptance of the
14 Consent Agreement. Respondent may not make any modifications to the document. Any
15 modifications to this original document are ineffective and void unless mutually approved
16 by the parties.

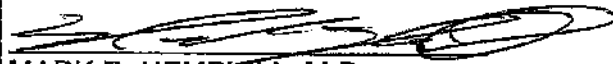
17 8. If the Board does not adopt this Consent Agreement, Respondent will not
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that
21 will be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("violating a formal order,
3 probation, consent agreement or stipulation issued or entered into by the board or its
4 executive director under this chapter") and 32-1451.

5 12. *Respondent has read and understands the conditions of probation.*

6
7
8 
MARK R. HEMPHILL, M.D.

DATED: 4/16/09

1
2 **FINDINGS OF FACT**

3 1. The Board is the duly constituted authority for the regulation and control of
4 the practice of allopathic medicine in the State of Arizona.

5 2. Respondent is the holder of license number 24566 for the practice of
6 allopathic medicine in the State of Arizona.

7 3. The Board initiated case number MD-08-0673A after receiving notification
8 from the Board's Addiction Medicine Consultant that on June 13, 2008, Respondent's
9 biological fluid test was positive for Ethylglucuronide (EtG).

10 4. On June 8, 2007, Respondent entered into a Consent Agreement for
11 Probation (Order) to participate in the Board's Monitored Aftercare Program (MAP).
12 Pursuant to the Order, Respondent was prohibited from consuming alcohol or any food or
13 other substance containing poppy seeds or alcohol. Additionally, Respondent was required
14 to submit to Board Staff declarations that he was in compliance with all the conditions of
15 probation.

16 5. On June 17, 2008, the Board received notification from the Addiction
17 Medicine Consultant indicating that on June 13, 2008, Respondent's urine test was
18 positive for EtG, an alcohol metabolite. Respondent denied consuming alcohol or ingesting
19 any foods containing alcohol.

20 6. On June 23, 2008, Respondent was ordered to undergo a residential
21 evaluation for chemical dependency. During the course of the evaluation, Respondent
22 admitted to consuming wine in September 2007 and using crystal methamphetamine on
23 one occasion in March 2007. Respondent also acknowledged that he had not informed
24 Board Staff of his use of alcohol and methamphetamine pursuant to the Probation Order.
25 The residential facility concluded that Respondent was not in good recovery from his
chemical dependence, and recommended extended treatment to provide him with the

1 opportunity for the best chance at abstinence and to be completely grounded in his
2 recovery. The residential facility opined that because of his high risk of relapse,
3 Respondent was unsafe to practice medicine.

4 7. On June 27, 2008, Respondent entered into an Interim Consent Agreement
5 for Practice Restriction. On September 14, 2008, Respondent entered long-term
6 residential treatment and completed it on December 8, 2008 with the diagnosis of
7 Stimulant Dependence. Subsequently, the Board's Addiction Medicine Consultant
8 recommended that Respondent participate in MAP, that he obtain and be monitored by a
9 psychiatrist and that he is safe to practice medicine. On December 12, 2008, Respondent
10 entered into an Interim Consent Agreement to participate in MAP and he remains in
11 compliance with the terms of the Agreement. On January 5, 2009, the Practice Restriction
12 was vacated.

13 CONCLUSIONS OF LAW

14 1. The Board possesses jurisdiction over the subject matter hereof and over
15 Respondent.

16 2. The conduct and circumstances described above constitute unprofessional
17 conduct pursuant to A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol
18 of habitual substance abuse.") and A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order,
19 probation, consent agreement or stipulation issued or entered into by the board or its
20 executive director under the provisions of this chapter.").

21 ORDER

22 IT IS HEREBY ORDERED THAT:

23 1. Respondent is issued a Letter of Reprimand.

24 2. Respondent is placed on Probation for five years with the following terms
25 and conditions:

1 a. Respondent shall submit quarterly declarations under penalty of
2 perjury on forms provided by the Board, stating whether there has been compliance with
3 all conditions of probation. The declarations shall be submitted on or before the 15th of
4 March, June, September and December of each year, beginning on or before September,
5 2009.

6 b.1. **Participation**¹. Respondent shall promptly enroll in and participate in
7 the Board's program for the treatment and rehabilitation of physicians who are impaired by
8 alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally
9 terminated with or without cause at the Board's discretion at any time after the issuance of
10 this Order.

11 2. **Relapse Prevention Group.** Respondent shall attend MAP's relapse
12 prevention group therapy sessions one time per week for the duration of this Order, unless
13 excused by the MAP relapse prevention group facilitator for good cause such as illness or
14 vacation. Respondent shall instruct the MAP relapse prevention group facilitators to
15 release to Board Staff, upon request, all records relating to Respondent's treatment, and
16 to submit monthly reports to Board Staff regarding attendance and progress. The reports
17 shall be submitted on or before the 10th day of each month.

18 3. **12 Step or Self-Help Group Meetings.** Respondent shall attend
19 ninety 12-step meetings or other self-help group meetings appropriate for substance
20 abuse and approved by Board Staff, for a period of ninety days beginning not later than
21 either (a) the first day following Respondent's discharge from chemical dependency
22 treatment or (b) the date of this Order.

23 4. Following completion of the ninety meetings in ninety days,
24 _____
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¹ Respondent's MAP participation is retroactive to December 12, 2008.

Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the MAP Director and approved by Board Staff. Respondent shall attend a minimum of three 12-step or other self-help program meetings per week for a total of twelve per month. Two of the twelve meetings must be Caduceus meetings. Respondent must maintain a log of all self-help meetings. Board Staff will provide the log to Respondent.

5. **Board-Staff Approved Primary Care Physician.** Respondent shall promptly obtain a primary care physician and shall submit the name of the physician to Board Staff in writing for approval. The Board-approved primary care physician ("PCP") shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent. Respondent shall request that the PCP document all referrals in the medical record. Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this Order to the PCP. Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in MAP.

a. "*Emergency*" means a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life.

6. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication* unless the PCP or other health care provider to whom the PCP refers Respondent prescribes the *Medication*. Respondent shall not self-prescribe any *Medication*.

a. "*Medication*" means a prescription-only drug, controlled substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen, and plain acetaminophen.

1 7. If a controlled substance is prescribed, dispensed, or is administered
2 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
3 within 48 hours and notify the MAP Director immediately. The notification shall contain all
4 information required for the medication log entry specified in paragraph 8. Respondent
5 shall request that the notification be made a part of the medical record. This paragraph
6 does not authorize Respondent to take any *Medication* other than in accordance with
7 paragraph 6.

8 8. **Medication Log.** Respondent shall maintain a current legible log of
9 all *Medication* taken by or administered to Respondent, and shall make the log available to
10 the Board Staff upon request. For *Medication* (other than controlled substances) taken on
11 an on-going basis, Respondent may comply with this paragraph by logging the first and
12 last administration of the *Medication* and all changes in dosage or frequency. The log, at
13 a minimum, shall include the following:

- 14 a. Name and dosage of *Medication* taken or administered;
- 15 b. Date taken or administered;
- 16 c. Name of prescribing or administering physician;
- 17 d. Reason *Medication* was prescribed or administered.

18 This paragraph does not authorize Respondent to take any *Medication* other
19 than in accordance with paragraph 6.

20 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol
21 or any food or other substance containing poppy seeds or alcohol.

22 10. **Biological Fluid Collection.** During all times that Respondent is
23 physically present in the State of Arizona and such other times as Board Staff may direct,
24 Respondent shall promptly comply with requests from Board Staff or MAP Director to
25 submit to witnessed biological fluid collection. If Respondent is directed to contact an

1 automated telephone message system to determine when to provide a specimen,
2 Respondent shall do so within the hours specified by Board Staff. For the purposes of this
3 paragraph, in the case of an in-person request, "promptly comply" means "immediately."
4 In the case of a telephonic request, "promptly comply" means that, except for good cause
5 shown, Respondent shall appear and submit to specimen collection not later than two
6 hours after telephonic notice to appear is given. The Board in its sole discretion shall
7 determine good cause.

8 11. Respondent shall provide Board Staff in writing with one telephone
9 number that shall be used to contact Respondent on a 24 hour per day/seven day per
10 week basis to submit to biological fluid collection. For the purposes of this section,
11 telephonic notice shall be deemed given at the time a message to appear is left at the
12 contact telephone number provided by Respondent. Respondent authorizes any person
13 or organization conducting tests on the collected samples to provide testing results to the
14 Board and the MAP Director.

15 12. Respondent shall cooperate with collection site personnel regarding
16 biological fluid collection. Repeated complaints from collection site personnel regarding
17 Respondent's lack of cooperation regarding collection may be grounds for termination
18 from MAP.

19 13. Out of State Travel and/or Unavailability at Home or Office
20 Telephone Number. Respondent shall provide Board Staff at least three business days
21 advance written notice of any plans to be away from office or home when such absence
22 would prohibit Respondent from responding to an order to provide a biological fluid
23 specimen or from responding to communications from the Board. The notice shall state
24 the reason for the intended absence from home or office, and shall provide a telephone
25 number that may be used to contact Respondent.

1 14. Payment for Services. Respondent shall pay for all costs,
2 including personnel and contractor costs, associated with participating in MAP at
3 time service is rendered, or within 30 days of each invoice sent to Respondent.

4 15. Examination. Respondent shall submit to mental, physical, and
5 medical competency examinations at such times and under such conditions as directed by
6 the Board to assist the Board in monitoring Respondent's ability to safely perform as a
7 physician and Respondent's compliance with the terms of this Order.

8 16. Treatment. Respondent shall submit to all medical, substance
9 abuse, and mental health care and treatment ordered by the Board.

10 17. Obey All Laws. Respondent shall obey all federal, state and local
11 laws, and all rules governing the practice of medicine in the State of Arizona.

12 18. Interviews. Respondent shall appear in person before the Board and
13 its Staff and MAP committees for interviews upon request, upon reasonable notice.

14 19. Address and Phone Changes, Notice. Respondent shall
15 immediately notify the Board in writing of any change in office or home addresses and
16 telephone numbers.

17 20. Relapse, Violation. In the event of chemical dependency relapse by
18 Respondent or Respondent's use of drugs or alcohol in violation of the Order,
19 Respondent's license shall be **REVOKED**. Respondent agrees to waive formal hearing on
20 the revocation. In the alternative, Respondent may **SURRENDER HIS LICENSE** if he
21 agrees in writing to being impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

22 21. Notice Requirements.

23 (A) Respondent shall immediately provide a copy of this Order to all
24 employers and all hospitals and free standing surgery centers where Respondent currently
25 has privileges. Within 30 days of the date of this Order, Respondent shall provide the

1 Board with a signed statement of compliance with this notification requirement. Upon any
2 change in employer or upon the granting of privileges at additional hospitals and free
3 standing surgery centers, Respondent shall provide the employer, hospital or free standing
4 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
5 the granting of privileges at additional hospitals and free standing surgery centers,
6 Respondent shall provide the Board with a signed statement of compliance with this
7 notification requirement.

8 (B) Respondent is further required to notify, in writing, all employers,
9 hospitals and free standing surgery centers where Respondent currently has or in the
10 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
11 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
12 of any of these events Respondent shall provide the Board written confirmation of
13 compliance with this notification requirement.

14 22. Public Record. This Order is a public record.

15 23. Out-of-State. In the event Respondent resides or practices as a
16 physician in a state other than Arizona, Respondent shall participate in the rehabilitation
17 program sponsored by that state's medical licensing authority or medical society.
18 Respondent shall cause the monitoring state's program to provide written reports to the
19 Board regarding Respondent's attendance, participation, and monitoring. The reports
20 shall be due quarterly on or before the 15th day of March, June, September, and
21 December of each year, until the Board terminates this requirement in writing. The
22 monitoring state's program and Respondent shall immediately notify the Board if
23 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)
24 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug
25

1 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is
2 required to undergo any additional treatment.

3 24. This Order supersedes all previous consent agreements and
4 stipulations between the Board and/or the Executive Director and Respondent.

5 25. The Board retains jurisdiction and may initiate new action based upon
6 any violation of this Order.

7 26. Respondent shall immediately obtain a treating psychiatrist approved
8 by Board Staff and shall remain in treatment with the psychiatrist until further order of the
9 Executive Director. Respondent shall comply with the psychiatrist's recommendations for
10 continuing care and treatment. Respondent shall instruct the psychiatrist to release to
11 Board Staff, upon request, all records relating to Respondent's treatment, and to submit
12 quarterly written reports to Board Staff regarding diagnosis, prognosis, medications, and
13 recommendations for continuing care and treatment of Respondent. The reports shall be
14 submitted on or before the 15th day of March, June, September and December of each
15 year, beginning on or before September, 2009. Respondent shall provide the psychiatrist
16 with a copy of this order. Respondent shall pay the expenses of all the psychiatric care
17 and be responsible for the preparation for the quarterly reports. After twelve months,
18 Respondent may submit a written request to the Executive Director requesting termination
19 of the requirement that Respondent remain in treatment with a psychiatrist. The decision
20 to terminate will be based, in part, upon the treating psychiatrist's recommendation for
21 continued care and treatment.

22 3. This Order is the final disposition of case number MD-08-0673A.

23 DATED AND EFFECTIVE this 4th day of June, 2009.



ARIZONA MEDICAL BOARD

By Amade Rich

/ Lisa S. Wynn
Executive Director

ORIGINAL of the foregoing filed
this 4th day of June, 2009 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed
this 4th day of June, 2009 to:

Calvin L. Raup
Raup & Hergenroether
One Renaissance Square
Two N. Central Avenue, Suite 1100
Phoenix, Arizona 85004-0001

EXECUTED COPY of the foregoing mailed
this 4th day of June, 2009 to:

Mark R. Hemphill, M.D.
Address of Record

Kymda Carley
Investigational Review